IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3503 of 2002
and
SPECIAL CIVIL APPLICATION No 3508 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KHORAJIYA DAWOODBHAI SULAIMAN

Versus

STATE OF GUJARAT

Appearance:
MR KG VAKHARIA, Sr. Advocate with
MR MK VAKHARIA for Petitioners
MR HC PATEL, AGP for Respondent No. 1-2
Respondent No. 3 DELETED

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 12/04/2002

COMMON ORAL JUDGEMENT

Leave to delete respondent No. 3 in both the petitions in view of the oral request made by Mr Vahkharia.

Rule. Mr HC Patel, learned AGP waives service of Rule for respondent Nos. 1 and 2.

2. Special Civil Application No. 3503 of 2002 is filed by two elected members of Vaghdod taluka panchayat. At the hearing, the petitioners also claim through their learned counsel Mr MK Vakharia that the petition is filed on behalf of 12 other elected members of Vaghdod taluka panchayat. Special Civil Application No. 3508 of 2002 is filed by the Patan taluka panchayat and its President.

3. Prior to October, 1997, there was one unified taluka known as Patan taluka. By notification dated 15.10.1997 Patan taluka was bifurcated into Patan taluka and Vaghdod taluka. Pursuant to the notifications issued under the Bombay Land Revenue Code, separate taluka panchayats were established for Patan taluka and for Vaghdod taluka. Elections to the Vaghdod taluka panchayat were held in September, 2000 and its first meeting was held on 5.10.2000. Elections to the Patan taluka panchayat were held in October 2000 and its first meeting was held on 12.10.2000. Annexure "A" of the petitions is the declaration of results of the respective talukas. Recently, by notification dated 3.7.2001 under the Bombay Land Revenue Code, the State Government has included Vaghdod taluka into Patan taluka. The said notification is at Annexure "B" to each petition.

4. In the present petitions, it is contended that pursuant to the aforesaid notification dated 3.7.2001, the State Government is required to issue consequential notifications under Section 264(a)(i) & (iii) and also Section 264(2) of the Gujarat Panchayats Act, 1993 (hereinafter referred to as "the Panchayats Act" or "the Act"). The petitioners apprehend that the State Government will not discharge the statutory duties in view of the fact that the majority of the members of Vaghdod taluka panchayat as well as the majority of the members of Patan taluka panchayat belong to a party other the party ruling in the State.

5. In response to the notice issued by this Court in these petitions, Mr HC Patel, learned AGP appears for the respondents, State of Gujarat and the Development Commissioner and submits that since no order adverse to the petitioners is passed, the petitions are not maintainable. Mr Patel further submits that the State Government does have the power to dissolve the taluka panchayats if exigencies so demand and that the petitioners do not have any right to demand that the State Government be directed to exercise one power or the

another.

6. Before dealing with the rival submissions, it is necessary to refer to the relevant provisions of the Panchayats Act in so far as the same are relevant for the purpose of the present petitions. Section 7 of the Bombay Land Revenue Code, 1879 empowers the State Government to alter the revenue limits of the villages, talukas and districts. Chapter II of the Panchayats Act provides for establishment of panchayats and their area of jurisdiction. Section 13 of the Act provides for duration of panchayats and their reconstitution. Sub-section (1), which is relevant, reads as under :-

"13. Duration of panchayats and their reconstitution. - (1) Every panchayat, unless sooner dissolved under this Act shall continue for five years from the date appointed for its first meeting and no longer."

This Section is obviously based on the provisions of Article 243E of the Constitution relevant portion of which reads as under :-

"243E. Duration of Panchayats, etc.- (1) Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer.

(2) No amendment of any law for the time being in force shall have the effect of causing dissolution of a Panchayat at any level, which is functioning immediately before such amendment, till the expiration of its duration specified in Clause (1)."

Section 264 of the Act in so far as the relevant reads as under :-

"264. Consequences of alteration of limits of district or taluka.-(1) When, on account of the constitution of a new district or taluka under the Land Revenue Code, or for any other reason, the limits of a district, or as the case may be, a taluka are, during the term of office of the members of the district panchayat or, as the case may be, the taluka panchayat, altered so as to -

(a) include any area therein, or

(b) ... ...

the State Government may, notwithstanding anything contained in this Act or any other law for the time being in force, by order published in the Official Gazette, provide for all or any of the following matters, namely :-

(i) in a case falling under clause (1), the interim increase in the number of members of the district panchayat or, as the case may be, the taluka panchayat, and the appointment of such additional members from amongst the members of panchayat who are elected from the area so included;

(ii) ... ...

(iii) the term for which additional members so appointed shall hold office and the manner of filling casual vacancies of such members;

(2) The district panchayat or the taluka panchayat, if any, functioning immediately before the alteration of the limits shall, subject to the addition or exclusion of members under sub-section (1), continue to function until the expiry of its duration under this Act and on such expiry it shall be reconstituted in the manner provided in this Act."

7. A perusal of the aforesaid provisions clearly indicates that the panchayat is constituted for a period of five years and even any legislative amendment having the effect of causing dissolution of a panchayat at any level, which is functioning immediately before such amendment, cannot curtail the term of five years stipulated in clause (1) of Article 243E and sub-section (1) of Section 13 of the Panchayats Act. Section 264 provides for consequences of alteration of limits of the district panchayat or the taluka panchayat. As per the above quoted provisions, in view of inclusion of Vaghdod taluka into Patan taluka by notification dated 3.7.2001, the State Government is required to exercise the powers of increasing the number of members of the Patan taluka panchayat and appointing the members of the Vaghdod taluka panchayat as additional members of the Patan taluka panchayat for the remainder of the term of the

Patan taluka panchayat which is till October, 2005. There is no reason why the State Government should not or cannot exercise the powers under sub-sections (1) and (2) of Section 264 of the Panchayats Act. It is obvious that the merger of Vaghdod taluka into Patan taluka cannot justify the exercise of any power under Section 253 of the Panchayats Act. That provision can be invoked only where the panchayat exceeds or abuses its power or is incompetent to perform or makes persistent default in the performance of the duties imposed on it or functions entrusted to it or fails to obey the orders of a superior panchayat or the State Government or its authorized officer under the Act. Obviously when the Vaghdod taluka has been merged into the Patan taluka, the State Government will have to exercise the powers under Section 264 of the Panchayats Act. It is clear that in view of the above provisions, the State Government cannot exercise the power of dissolution of the taluka panchayat which was elected for a term of five years and, therefore, the members elected for a period of 5 years will continue as members of the Patan taluka panchayat into which the Vaghdod taluka has been merged.

8. In view of the above, both these petitions deserve to the allowed. The State Government shall issue appropriate notifications under the provisions of Section 264 of the Gujarat Panchayats Act, 1993 for increasing the seats of members of the Patan taluka panchayat and for appointing the elected members of the Vaghdod taluka panchayat as additional members of the Patan taluka panchayat under the provisions of sun-section (1) of Section 264 of the Gujarat Panchayats Act, 1993 and the State government shall comply with the other provisions of Section 264 of the Gujarat Panchayats Act, 1993. Of course, the State Government shall appoint the members of the erstwhile Vaghdod taluka panchayat i.e. those elected in September, 2002 as per the notification at Annexure "A" to Special Civil Application No. 3503 of 2002 as members of the Patan Taluka Panchayat and continue the persons elected in October 2002 as per the notification at Annexure "A" to Special Civil Application No. 3508 of 2002 as members of the Patan Taluka Panchayat. These directions shall be complied with within one month from the date of receipt of the writ of this Court.

9. The petitions are accordingly allowed. Rule is made absolute with no order as to costs.

Direct Service is permitted.

(M.S. Shah, J.)

sundar/-